

House Enrolled Act 1717

On May 11, 2007 House Enrolled Act 1717 was signed by the Governor and takes effect on July 1, 2007. HEA 1717 contains many provisions that revise the Indiana Loan Broker Act (“Act”) affecting the licensing requirements for loan brokers, the registration requirements for originators, prohibitions of certain conduct, enforcement of the Act, and the requirements for loan brokers claiming an exemption. Summarized below are many of the provisions that will affect both applicants and current loan broker licensees and originators. This is a summary only and is not a complete review of all of the provisions of the bill. In the event of a conflict between the summary and the bill, the latter will be controlling. This is intended and should be used for general information only. Private legal counsel should be consulted as to the application of any provisions of the bill to specific situations.

For Loan Brokers:

Applying for License as a Loan Broker – Beginning July 1, 2007, the Revised Act requires that person(s) applying for an initial license as a loan broker will be required to submit with their application for licensure:

- A **\$400.00** application fee, plus **\$200.00** for each ultimate equitable owner – Ind. Code § 23-2-5-5(a)(3)
- The name and registration number for **each** originator and principal manager employed by the loan broker. – Ind. Code 23-2-5(a)(7)
- The address(s), telephone number(s), SSN, and date of birth for each of the loan broker’s ultimate equitable owners – Ind. Code § 23-2-5-5(a)(8)
 - Ind. Code § 23-2-5-3(k) defines an **ultimate equitable owner** as a person who, directly or indirectly, owns or controls ten percent (10%) or more of the equity interest in a loan broker licensed or required to be licensed regardless of whether the person owns or controls the equity

Contract for Services – The following statement **must be included** on **every** contract for services of a loan broker beginning July 1, 2007.

“No statement or representation by a loan broker is valid or enforceable unless the statement or representation is in writing.” – Ind. Code § 23-2-5-9(c)

Documents - Any document that is delivered or required to be delivered to a borrower or prospective borrower by a loan broker, principal manager, or originator **must** contain the loan broker **license** number, and the **registration** number of **each** principal manager or originator that had contact with the file. – Ind. Code § 23-2-5-23

Employees - A licensed loan broker or applicant for licensure **shall not** employ an individual to engage in origination activities **unless** the person is **registered** as a principal manager or an originator. – Ind. Code § 23-2-5-20.5(a).

Employee Termination – When a registered principal manager or originator is **terminated** either voluntarily or involuntarily, the loan broker licensee shall **notify** the Commissioner of the termination and the **reasons** for the termination within **five** (5) days of the termination. – Ind. Code § 23-2-5-10(h)

Branch Offices - A loan broker **shall not** operate any principal or branch office of a loan broker business without **employing** a registered principal manager at **each** office location located, or engaging in origination activities in Indiana. (Ind. Code 23-2-5-20.5(b)) The Act **defines** a principal manager as

an individual that is principally responsible for the supervision and management of the employees and business affairs of a licensee at a specific location and has at least three years of experience, acceptable to the Commissioner in the loan brokerage business or financial services. (Ind. Code 23-2-5-3(1))

Beginning July 1, 2007, an applicant for an initial loan broker license will be required to have a registered principal manager at each office location conducting origination activities in Indiana. A currently licensed loan broker will be required to comply with the principal manager requirement no later than July 1, 2008.

For Principal Managers & Originators

Originators – An applicant for registration as an originator must apply for registration with the Securities Division and submit with the application a \$100.00 application fee – Ind. Code § 23-2-5-5(b)(8)

Principal Managers – An applicant for registration as a principal manager must apply for registration with the Securities Division, submit with the application a \$200.00 application fee (Ind. Code § 23-2-5-5(c)(9), and provide evidence that they have at least three (3) years experience, acceptable to the Commissioner in the loan brokerage business or financial services. (Ind. Code § 23-2-5-5(c)(8))

NOTE: Under the Revised Act, it is the responsibility of the individual applying for registration, to get properly registered with the Securities Division. However, if an individual is conducting origination activities in Indiana without being properly registered with the Division, both the loan broker and the unregistered individual may be in violation of the Act.

Transferring a Registration – If a registered principal manager or originator seeks to transfer their registration to a different licensed loan broker, they may do so by applying for a transfer on the registration application required by Ind. Code § 23-2-5-5(b) before the registrant conducts origination activities or serves as a principal manager for the new employer.

Effective Dates – Certificates of registration are valid until January 1 of the second year after issuance, at which time the registrant must apply for renewal. – Ind. Code 23-2-5-5(g)
The registration of a principal manager or an originator is **not effective** during times in which the principal manager or originator is **not employed** by a **licensed** loan broker. – Ind. Code 23-2-5-20.5(a)

Examination - Each individual applying for a registration as a principal manager or originator must pass an examination in order to receive a certificate of registration. – Ind. Code 23-2-5-5(d)

Continuing Education – To maintain an individual's certificate of registration as a principal manager or an originator, the individual must provide evidence that they have completed at least six (6) hours of approved academic instruction during each calendar year after the year in which the registration was initially issued. – Ind. Code § 23-2-5-21(a) Evidence of completion must be submitted at the time in which the registrant is applying for renewal or transfer, which ever is applicable.

For Loan Broker, Ultimate Equitable Owners, Principal Managers, & Originators

Appraisal Companies - Some of the revisions to the Act contained in HEA 1717 deal with the loan broker's relationship and level of ownership or control with an appraisal company.

Beginning July 1, 2007, it is a violation of the Loan Broker Act to knowingly bribe, coerce, or intimidate another person to corrupt or improperly influence the independent judgment of a real estate

appraiser with respect to the value of any real estate offered as a security for a mortgage loan. – Ind. Code § 23-2-5-9.1(d)

Section 9.1(e) of the Revised Act prohibits a licensee or registrant, (and members of their immediate family) from owning or controlling the majority interest in an appraisal company, unless the affiliation existed prior to June 30, 2007, in which case the person's level of ownership or control shall not increase, nor shall the interest be transferred to a member of the person's immediate family. If the Commissioner determines that a violation of the Act has occurred, the Commissioner may order one or more persons to divest their interest in the appraisal company. – Ind. Code § 23-2-5-9.1(e-f)

Denial, Suspension, or Revocation – The Securities Commissioner may deny, suspend, or revoke a loan broker license or a certificate of registration, if the licensee, registrant, or ultimate equitable owner of a licensee has:

- been subject of an adjudication or determination within the past ten (10) years by any court with jurisdiction or an agency or administrator that regulates securities, commodities, banking, financial services, insurance, real estate, or the real estate appraisal industry – Ind. Code § 23-2-5-10(c)(2)
- been denied the right to business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry or has had such rights revoked or suspended by Indiana or any other state, federal, or foreign governmental agency or self regulatory organization – Ind. Code § 23-2-5-10(c)(3)
- had a felony conviction within the past five (5) years – Ind. Code § 23-2-5-10(c)(7)(B)
- (applies to loan brokers and principal managers) failed to reasonably supervise the person's originators or employees to ensure compliance with the Act – Ind. Code § 23-2-5-10(c)(8)
- is on the Department of State Revenue's most recent tax warrant list. – Ind. Code § 23-2-5-10(c)(9)
- engaged in dishonest or unethical practices in the loan broker business, as determined by the Commissioner – Ind. Code § 23-2-5-10(c)(10)

If a licensee, an officer, a director, or an ultimate equitable owner, or a registrant has violated the Act, the Commissioner may censure such person(s) or may permanently bar them from becoming licensed, registered, or employed by a licensee. – Ind. Code 23-2-5-10(d)

Material Fact – It is a Class C felony for a person to knowingly make or cause to be made any document to be filed with or sent the Securities Division in any proceeding, investigation, or examination any statement that is, at the time and in the light of the circumstance under which it is made, false or misleading in any material respect. – Ind. Code § 23-2-5-16(a)

Funds - If a loan broker licensee, a principal manger, or originator is in possession of funds belonging to others, including a prospective borrower, must at the request of such person account for the funds, follow any reasonable and lawful instructions set by the person, and return any unspent funds in a timely manner. – Ind. Code § 23-2-5-18.5

Criminal Background Check: Each of the loan broker's ultimate equitable owners and applicants for registration as a principal manager or originator must undergo a criminal background check before a loan broker license or certificate of registration shall be issued. – Ind. Code § 23-2-5-5(k)

For Exempt Loan Brokers

HUD Exemption – A loan broker that will be claiming or has claimed an exemption under Ind. Code § 23-2-5-19(a)(8)(E) as a correspondent of loans insured by the United States Department of Housing and Urban Development must close at least twenty-five (25) such insured loans in Indiana during each calendar year to qualify for the exemption. Loan brokers claiming an exemption as a HUD correspondent under Ind. Code § 23-2-5-19(a)(8)(E) after July 1, 2007, must comply with the twenty-five loan minimum to claim the exemption. Loan brokers that have claimed the exemption as a HUD correspondent prior to June 30, 2007 will be required to comply beginning January 1, 2008.

Filing a Claim of Exemption – Beginning July 1, 2007, a loan broker claiming an exemption under Ind. Code § 23-2-5-19(a)(8) must file with the Securities Division a claim of exemption form which includes the name and business address for each employee originating loans in Indiana, a list of all office locations located, or processing loans originated in Indiana, and other information required by the Securities Commissioner. The exempt loan broker, in order to maintain the claim of exemption must re-file the claim every twenty-four (24) months. If any information contained in the filing changes after the filing had been submitted the loan broker must notify the Securities Division of the change in writing. – Ind. Code § 23-2-5-19(e)

Beginning July 1, 2007 the claim of exemption must be accompanied by a fee of \$200 (Ind. Code 23-2-5-19(e)(3)) until July 1, 2008, when the fee increases to \$400 (Ind. Code § 23-2-5-19(e)(3)).

Scope of the Exemption – An exemption described in Ind. Code § 23-2-5-19(a)(8) does not extend to a subsidiary of the exempt loan broker or an unaffiliated third party, nor does an exemption claim under Ind. Code § 23-2-5-19(a)(8)(D) extend to a registered United States Department of Veterans Affairs Agent. – Ind. Code § 23-2-5-19(f)

A loan broker making an initial claim of exemption under Ind. Code § 23-2-5-19(a)(8) must do so on the required form beginning July 1, 2007. Current loan brokers that claimed an exemption, prior to June 30, 2007, must file the claim of exemption on the required form no later than January 1, 2008.

A loan broker that qualified for an exemption as a HUD correspondent under Ind. Code § 23-2-5-19(a)(8)(e) before July 1, 2007, but does not qualify for the exemption after July 1, 2007 (loan broker *does not close more than 25 HUD-insured loans during each calendar year*) must become licensed as a loan broker pursuant to Ind. Code § 23-2-5-4 no later than January 1, 2008 (Ind. Code § 23-2-5-27(e)). In addition, the loan broker must comply with Ind. Code § 23-2-5-20.5(b), which requires a loan broker to have a registered principal manager employed at any principal or branch office located, or engaged in origination activities in Indiana, no later than July 1, 2008 (Ind. Code § 23-2-5-27(f)).

Academic Instruction Course Review Fees

Effective July 1, 2007, the Commissioner may require a fee for reviewing a course to determine its acceptability. – Ind. Code § 23-2-5-21(c)